

household" is determined by whether the applicant purchases and prepares meals together with the other household members (see infra). An applicant who purchases and prepares meals separately from other household members can be considered a "separate household" of one; and only his income and resources are used in determining his food stamp eligibility. If the applicant purchases and prepares meals with the other household members, the entire household must apply for benefits; and the income and resources of all the household members must be considered.

The petitioner's worker, who has thirteen years experience and who appeared to be competent and sensitive, testified that although she has no specific recall of her interview with the petitioner, her practice is to explain in detail to all food stamp applicants the "options" (supra) of household composition. She stated that the petitioner must have indicated that he purchased and prepared his meals with the other household members. Because of this, the worker inquired further as to the income of the other household members. The petitioner told the worker that his housemate was receiving workers compensation benefits, but he forgot that she was also receiving regular child support payments.

Thus, the Department, by notice dated November 8, 1990, determined the petitioner's eligibility for food stamps as a household of four persons, counting only the workers compensation benefits as household income.

On December 13, 1990, the Department learned that the petitioner's housemate also received child support (when the petitioner applied for G.A. benefits and brought this fact to the Department's attention). Apparently, at this time the Department orally indicated to the petitioner that this income would adversely affect his food stamps.

The Department's records indicate that on December 20, 1990, the petitioner called the district office to report that the household was moving. In that conversation the petitioner was reported to be "upset" that his housemate's income was being used. The petitioner told the worker that "sometimes" he ate with the others and "sometimes" not. The worker told him she would "research" the matter and get back to the petitioner.

The worker called the petitioner back on January 4, 1991. The worker's notes of that conversation are as follows:

Per my phone call with [petitioner] today in regards to whether or not he does purchase and prepare separately from [housemate]. Client stated "they all eat together". Since this is the case there was no need for changes to be made.

There is no dispute that the housemate's child support income and workers compensation exceeded the maximum for a food stamp household of four persons. On January 21, 1991, the Department sent the petitioner a notice closing his food stamps due to the household's excess income.

On February 25, 1991, the Department sent the petitioner another notice stating that he had previously

been overpaid \$585.00 in food stamps. On April 1, 1991, the Department sent a "corrected notice" identical to the previous one, except that the amount of the overpayment was determined to be \$559.00. The back of that notice contained a form advisory that the petitioner had ninety days in which to appeal the decision.

The petitioner did not contact the Department after receiving the above notice. However, on May 6, 1991, the Department sent him another notice identical to the one reproduced above--including the notice of appeal rights on the back.

On July 25, 1991, the petitioner reapplied for food stamps--with a different worker. This time he was granted benefits as a household of one due to the fact that he purchased and prepared his food separately from the other household members. The income of the other household members was not counted in the computation of his benefits.

On July, 29, 1991, the Department sent the petitioner yet another overpayment notice similar (including the ninety day appeal provisions) to the previous notices (supra), except that for the first time the following sentence appeared on the notice.

If you do not call or come in to discuss this within thirty days of the date this was mailed, we will automatically reduce the amount of food stamps you receive every month. You will be notified before we reduce your benefits.

The petitioner filed his appeal in this matter on August 2, 1991, and a hearing was held on September 17,

1991.

At the hearing the petitioner testified that he can barely read and write. He stated that while he and his housemate shop for food together, they purchase their food separately. He further stated that he always eats breakfast and lunch separately and that he prepares his dinner separately (though usually simultaneously) with the others, and eats dinner with them.

Moreover, the petitioner maintained that this was the household's arrangement both before and after his most recent (July, 1991) application for food stamps. He stated that when he applied for food stamps in November, 1990, he did not understand the distinction between eating his meals with the household and purchasing and preparing those meals. He could not say, however, that the Department did not attempt to explain this distinction to him.

The hearing officer deemed the petitioner's testimony in this regard to be credible. There is no question that confusion can exist in determining separate household status. (The application, itself, asks only if there are others in the household who do not "eat with you." It does not mention "purchasing" or "preparing" meals.) As noted above, however, the worker in this matter was highly experienced and appeared to be competent and sensitive to maximizing--to the extent legal and practicable--the benefits available of her clients. Moreover, it appears from her notes of her January 4, 1991 contact with the

petitioner that she specifically inquired as to how the petitioner purchased and prepared his meals. (See, supra.)

Although the petitioner may have misunderstood her, it cannot be found that the Department did not adequately explain to him the requirements of separate household status. To the contrary, it appears that the petitioner was given ample opportunity, but failed to explain accurately to the Department the fact that he purchased and prepared his meals separate from the other household members. Any "error" that occurred in determining his household status at that time must, therefore, be attributed to the petitioner's (understandable) lack of understanding as to the information the Department was requesting.

In light of the above, it is unfortunate that the petitioner did not appeal the Department's decision of January 21, 1991 terminating his food stamps.² However, on none of the subsequent notices of overpayment (see supra) did the Department explain to the petitioner either the factual basis of the overpayment or the legal consequences of such a determination. Indeed, it was not until July, 1991, when the petitioner reapplied for and was granted food stamps under the same household circumstances as had existed before, that he can reasonably be held to have ascertained the factual basis of his alleged overpayment. Also, it was not until the petitioner received the July 29, 1991, overpayment notice (after he had reapplied for benefits) that he was informed that the Department could recoup the

overpayment involuntarily from ongoing benefits.³

Therefore, it must be found that the petitioner's grievance in this matter did not arise until late July, 1991, when he was informed (for the first time) that the alleged overpayment of benefits could be recouped from him involuntarily.

ORDER

The petitioner's appeal is held to be timely. The matter is remanded to the Department to determine the amount of overpayment as the difference between the amount paid to the petitioner during the period in question and the amount he would have been eligible to receive as a one-person household. The Department's decision that the overpayment resulted from the petitioner's inadvertent error is affirmed.

REASONS

Food Stamp Fair Hearing Rule No. 1 provides, in pertinent part:

Appeals shall not be considered by the board unless the appellant household has either mailed a request for fair hearing or clearly indicated that it wishes to present its case to a higher authority within 90 days from the date of any departmental action or loss of benefits from which action or loss of benefits the household wishes to appeal. "Departmental action" shall include a denial or a partial denial of a request for restoration of benefits lost more than 90 days but less than one year prior to the request. In addition, at any time within a certification period, a household may request a fair hearing to dispute its current level of benefits. (Emphasis added.)

As found above, the Department did not inform the petitioner until July 29, 1991, that the overpayment it had

assessed could be recouped involuntarily from the petitioner's ongoing food stamp benefits. No prior notice apprised the petitioner of any "loss of benefits". Since the petitioner appealed within a few days of receiving the July 29 notice, his appeal should be considered timely.⁴

As to the merits of the petitioner's claim,⁵ F.S.M. § 273.18(d) provides that involuntary recoupment through a reduction in ongoing food stamp benefits can occur only when overpayments are the result of "inadvertent household error"--but not when the overpayment was caused by "administrative error".

In this case it is not disputed that if the petitioner purchased and prepared his meals separately, even if he ate with the rest of the household, he would have been eligible for food stamps as a one-person household. (The Department granted the petitioner benefits under this scenario as of July, 1991.) See F.S.M. § 273.1(a). As noted above, it is found that this was, in fact, the case when the petitioner applied for food stamps in November, 1990. Therefore, the amount of the overpayment to the petitioner during the period in question must be limited to the difference between what he was actually paid and the amount he would have been entitled to as a one-person household. The matter should be remanded to the Department to make this determination.

However, it cannot be concluded that the resultant overpayment was due to the Department's "error". As noted

above, it cannot be found that the Department did not give the petitioner a thorough explanation of his "options" and an ample opportunity to explain his household's circumstances. The fact that the petitioner misunderstood what the Department was asking, though understandable, cannot be considered the Department's "fault". Therefore, it must be concluded that overpayment resulted from the petitioner's "inadvertent" rather than the Department's "administrative" error.

The Department's decision is modified accordingly.

FOOTNOTES

¹The petitioner also applied for other benefits (ANFC and Medicaid) at that time. This appeal concerns only food stamps.

²This notice was not introduced into evidence by either party. The petitioner went without any food stamps from February to July 25, 1991. However, at the hearing and in his subsequent memorandum the petitioner did not question either the January, 1991, closure notice or the November, 1990 notice finding that his was a household of four persons.

³All of the notices in question appear to have been computer-generated. Probably, the Department's computers aren't programmed to issue notices explaining involuntary recoupment from ongoing benefits to individuals, like the petitioner, who aren't currently receiving food stamps. This may explain, but in no way excuses, the lack of this information in the notices.

⁴The board need not reach the question of whether the sending of subsequent identical (and gratuitous) notices by the Department--each containing a notice that the petitioner had ninety days to appeal--constitutes a "waiver" by the Department of any appeal deadline that arguably began running with the sending of the first notice. The petitioner's argument in this regard, however, appears to be well taken.

⁵In its memorandum the Department argues that the exact basis of the petitioner's appeal was not brought to the Department's attention in a timely manner. The proper response to this concern would have been a motion for a continuance made prior to the taking of the evidence. As it is, the Department has shown no actual prejudice in the fact that the hearing proceeded as scheduled on September 17, 1991.

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